SUPREME COURT OF THE UNITED STATES

FLORENCE TALAMINI, ADMINISTRATRIX OF ESTATE OF JOHN A. TALAMINI *v.* ALLSTATE INSURANCE COMPANY

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 84-18. Decided March 25, 1985

The appeal is dismissed for want of jurisdiction. Treating the papers whereon the appeal was taken as a petition for writ of certiorari, certiorari is denied.

CHIEF JUSTICE BURGER, with whom JUSTICE REHNQUIST and JUSTICE O'CONNOR join.

I agree that we should dismiss this appeal, but I would go beyond that. This appeal is an attempt to invoke the Court's jurisdiction on an utterly frivolous claim. Such efforts should subject the attorney who filed the jurisdictional statement to the sanction of Rule 49.2 of this Court,* at least where, as here, the appellee has moved for an award of costs and fees.

Appellant, the administratrix of her husband's estate, filed a complaint in state court seeking insurance benefits from appellee. Count I of the complaint sought benefits under Pennsylvania's No-Fault Motor Vehicle Insurance Act, 40 Pa. Stat. Ann. §§ 1009.101–.701 (Purdon Supp. 1984–1985) (repealed 1984). Count II alleged that appellee had violated Pennsylvania's Unfair Insurance Practices Act, *id.*, § 1171.1 *et seq.*, and sought statutory penalties under Pennsylvania's Unfair Trade Practices and Consumer Protection Law, 73 *id.*, § 201–9.2.

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*Rule 49.2 provides: "When an appeal or petition for writ of certiorari is frivolous, the Court may award the appellee or the respondent appropriate damages."

Appellee removed the suit to Federal District Court based on the parties' diversity of citizenship. On appellee's motion, the District Court dismissed Count II for failure to state a claim upon which relief could be granted, holding that the Pennsylvania laws upon which appellant relied do not provide any private right of action. Appellant immediately appealed to the United States Court of Appeals for the Third Circuit. The Court of Appeals granted appellee's motion to dismiss on the grounds that the District Court decision was not a final judgment and that the Court of Appeals thus lacked jurisdiction. Appellant then filed a jurisdictional statement with this Court, asserting that the Court of Appeals' dismissal of her appeal was erroneous and a violation of due process.

The Court of Appeals' action was unquestionably correct. See 28 U. S. C. § 1291; Fed. Rule Civ. Proc. 54(b). Not only is appellant's appeal to this Court completely frivolous on the merits, but also her attempt to bring the case here by way of appeal is totally improper; appellate jurisdiction is plainly lacking. See 28 U. S. C. § 1254(2).

Appellee has moved for an award of costs and fees for its expense in responding to this frivolous appeal. We afforded appellant the opportunity to respond to this motion; appellant's response provided nothing to meet the claim that the appeal is demonstrably frivolous. I would grant the motion to the extent of awarding appellee $1000.00 against Bruce Martin Ginsburg, Esq., appellant's counsel, pursuant to this Court's Rule 49.2.

It is suggested that two objectives justify the Court's refusal to apply Rule 49.2 in this and similar cases: (a) efficient use of the Court's time, and (b) affirmance of the principle of free access to the courts. Both objectives unquestionably are commendable, but the perspective is too narrow. Judicious use of the sanction of Rule 49.2 in egregious cases—and this is an egregious case—should discourage many of the patently meritless applications that are filed here each year. In the long run, this is the more effective

way to "minimize the time devoted to the disposition of applications that are plainly without merit," *ante*, at 3; after all, that is the whole purpose of Rule 49.2. Further, while freedom of access to the courts is indeed a cherished value, every misuse of any court's time impinges on the right of other litigants with valid or at least arguable claims to gain access to the judicial process. The time this Court expends examining and processing frivolous applications is very substantial, and it is time that could be devoted to considering claims which merit consideration.

Rule 49.2 has a purpose which has too long been ignored; it is time we applied it. I would apply it here.

JUSTICE WHITE, believing that there is no final judgment to review, would dismiss for want of jurisdiction.

JUSTICE POWELL took no part in the consideration or decision of this case.